UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/NGO/87
27 March 1997

Original: ENGLISH and FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Inter-Parliamentary Union, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 March 1997]

1. The defence of the rights of members of parliament constitutes a priority for the Inter-Parliamentary Union, the world organization of national parliaments. Indeed, the Union considers that in order for parliamentarians to be able to promote and protect human rights and fundamental freedoms in their respective countries they must themselves fully enjoy their human rights.

2. In 1976, the IPU established a Procedure for the Examination and Treatment of Communications concerning Violations of the Human Rights of Parliamentarians. A Committee on the Human Rights of Parliamentarians, made up of five MPs representing the different geopolitical regions, was entrusted with investigating complaints. The Committee meets in camera four times a year and, in a first stage, examines the cases laid before it confidentially in the light of international and national human rights norms. Under certain circumstances, the Committee may present at the two annual sessions of the Inter-Parliamentary Council, the Union's plenary governing body, a public report accompanied by recommendations for action. A file is only closed when the Committee or the Inter-Parliamentary Council considers that the case has been settled in conformity with international human rights standards or does not warrant any further action by the Union.

3. The Committee is currently examining, under its public procedure, 20 cases concerning 109 MPs in the following countries: Albania, Burundi, Cambodia, Colombia, Gambia, Guatemala, Honduras, Indonesia, Myanmar, Nigeria, Togo, Tunisia and Turkey. In some of these cases, important developments have taken place since the Committee's last session in January 1997.

4. The ultimate violation of a parliamentarian's rights, and hence of the right of the people to take part in the conduct of public affairs, is the dissolution or suspension of parliament or failure to recognize the outcome of elections. Thus, the Committee and the Council condemned the suspension of the National Assembly of Burundi in June 1996, which they considered as a violation of the fundamental right of the elected members of the Assembly to perform the mandate entrusted to them and thus a violation of the right of the people to participate in the conduct of public affairs. In January last, the Committee noted that, although the National Assembly had been re-established in September 1996, it did not enjoy the guarantees necessary for its functioning and that consequently the Assembly de facto did not exist. The Committee considered as a prerequisite for its functioning that the de facto Burundi authorities take all necessary steps to allow the exiled MPs to return to their country without fear for their lives and safety, thereby enabling them to exercise their parliamentary mandate.

5. Another case in point is that regarding MPs-elect from the Union of Myanmar. For several years now, the Union has expressed its indignation that the authorities of this country continue to ignore the outcome of the election of 27 May 1990: it considered in this respect that the National Convention convened by SLORC on 9 January 1993 is designed to prolong and legitimize military rule against the will of the people as expressed in the 1990 elections, and thus violates the principle established in the Universal Declaration of Human Rights that the "will of the people shall be the basis of the authority of government". Moreover, in view of the persistent silence of the authorities to requests for information regarding prison conditions, and their de facto refusal to authorize an on-site mission, the Committee considered at its January 1997 session that the allegations of human rights violations are well founded, and decided therefore to report at the next session of the Inter-Parliamentary Council that the authorities of the Union of Myanmar are guilty of manifest violations of human rights.

6. In the wake of the coup d'état in July 1994 in Gambia, several members of the dissolved parliament were arrested and, as was the case of Mr. Lamin wa Juwaara, held in incommunicado detention without any charges being brought against them. They were recently released. No compensation has as yet been paid to them.

7. Many of the cases of which the Committee is seized concern members of parliament who are stripped of their parliamentary mandate or "recalled" by their parties, prosecuted, harassed, threatened and even assassinated, in the last resort, for having exercised their fundamental right to freedom of speech, a right which lies at the very heart of democracy as it enables views opposing the power in place to be expressed. A case in point is that of Sri Bintang Pamungkas from Indonesia.

8. At the close of a trial which may have been flawed, Sri Bintang Pamungkas, a prominent government critic, was sentenced on 8 May 1996 to 2 years and 10 months' imprisonment for allegedly insulting the President of Indonesia during a seminar he gave in Germany in April 1995. A charge under article 104 of the Indonesian Penal Code (crimes against the security of the State) of having instigated or participated in demonstrations against President Suharto on the occasion of his visit to Germany in April 1995, had to be dropped previously for lack of evidence. Mr. Pamungkas' party, the PPP, "recalled" him from his parliamentary seat, a decision which came into effect on 8 May 1995 after President Suharto had signed the official dismissal decree. On 29 May 1996, Sri Bintang launched a new opposition party, the Indonesian Democratic Union Party (PUDI), whose existence is not recognized by the Government of Indonesia.

9. Considering that Sri Bintang was first summoned and interrogated on suspicion of having instigated and/or participated in the demonstrations against President Suharto and that, when no evidence was found, the investigation - instead of being dropped - was shifted to statements he allegedly made at the seminar in Germany, the Committee has expressed its fear that this might denote a deliberate attempt to have him prosecuted. Moreover, the Committee considers that in making the incriminated statement as brought to its attention, Sri Bintang merely exercised his right to freedom of speech.

10. Moreover, recalling a constant position of the IPU that, once elected, all members of parliament hold their mandate by popular will, the Council and the Committee regret that Indonesian law empowers political parties to have representatives of the people "recalled".

11. Since the Committee's last session, new developments have taken place. Sri Bintang was arrested on 5 March 1997 and accused of subversion for reportedly having called on his party members to ignore the 1997 parliamentary elections.

12. The right to freedom of speech is one of the Committee's main concerns regarding the cases of several former Turkish parliamentarians of Kurdish origin who were sentenced - at the close of trials which might have been seriously flawed - to various prison terms for belonging to and supporting a terrorist organization or for making separatist statements. The Committee fears that they may all have been prosecuted solely for having exercised their right to freedom of expression and it deeply regrets that the Turkish authorities have so far not taken heed of the recommendations and appeals of several international bodies to release the MPs concerned, for example by way of an amnesty bill. The Committee has also consistently recalled decision 40/1995 of the United Nations Working Group on Arbitrary Detention, declaring their detention arbitrary. As regards four of them (Mr. Türk, Mr. Yurtdas, Mr. Alinak and Mr. Sakik), they were sentenced to a prison term exceeding 12 months and as a consequence are deprived of their political rights for life. Two of them, who are lawyers (Mr. Alinak and Mr. Yurtdas), have been debarred for life from exercising their profession. The Committee considered that "owing to these consequences, the sentences become harsh and oppressive and seem to reflect a deliberate attempt to prevent these former MPs from engaging in any future political activity".

13. On the occasion of its second visit to Turkey in April 1996, the Committee noted with interest the view of the Turkish authorities that "people should voice their views democratically". Considering that the MPs concerned had been democratically elected, that three of them who stood for re-election in December 1995 obtained many votes despite the many obstacles to their campaign and that they all voiced their views and that of their electorate democratically, the Committee wondered "what in the eyes of the Turkish Government constitutes democratic expression permitting Turkish citizens of Kurdish background to raise and discuss matters relating to the assertion of Kurdish cultural identity and the many human rights violations being committed in south-east Turkey".

14. The problem of impunity is a major concern of the Union in several cases regarding parliamentarians from Burundi, Colombia, Honduras, Guatemala and Togo who were either assassinated or severely injured following attempts on their lives or are receiving death threats. In all but two cases, namely that of Mr. Pavón from Honduras and Senator Cepeda from Colombia, the investigations into the crimes in question have produced no result or have not even been instituted. The Committee has consistently stressed that impunity constitutes a serious threat to democracy and human rights and that the State has a duty to ensure that justice is done. The Union has also consistently stressed that the victims of human rights violations or their families are entitled to adequate material compensation. In this respect, the Committee welcomed the commitment of the Government of Togo, as expressed at the fifty-second session of the Commission on Human Rights, to adopt measures to take into consideration the right to compensation for the families of the victims of past political violence and trusts that such measures will soon be taken.

15. The Union has been requesting since 1991 clemency for Mr. Sukatno from Indonesia who, after a trial whose fairness has been contested, was sentenced to death in 1971 for involvement in the 1965 coup attempt. Mr. Sukatno is now aged 65 and has spent almost 30 years in prison. On the occasion of an on-site mission and thanks to the co-operation of the competent Indonesian authorities, the Secretary-General was able to meet Mr. Sukatno personally in prison. In the presence of representatives of the Indonesian authorities, he noted that Mr. Sukatno was suffering from very serious mental and physical problems. In the decision it adopted on this case in January 1997, the Committee considered that keeping such an old and ill man as Mr. Sukatno in prison and subject to the threat of being executed was contrary to any humanitarian standards and certainly constituted an unprecedented case. It reiterated its pressing appeal to President Suharto to grant Mr. Sukatno pardon.

16. In recent years, the Committee has noted a growing tendency for criminal charges to be brought against political opponents. This was the case of Mr. Fatos Nano, former Prime Minister of Albania, who, in April 1994, was sentenced to 12 years' imprisonment for having embezzled State funds in favour of a third person, something which he has always strongly refuted. The Union has consistently considered that his prosecution might have been motivated by political considerations. Mr. Nano benefited from an amnesty last month.

17. Mr. Khemmais Chammari from Tunisia, a well-known human rights advocate was sentenced in July 1996, under article 60 bis and 60 quater (4) of the Tunisian Penal Code, to five years' imprisonment for violating the confidentiality of the pre-trial investigation in a matter affecting the external security of the State. The Committee was concerned at the allegation that the Court had been unable to prove its case, and had doubts about the legal characterization of the alleged facts.

18. At its last session, in January 1997, the Committee was very pleased to note that, on 30 December 1996, Mr. Chammari had benefited from a conditional release. While warmly welcoming his release, the Committee requested additional information which the authorities have meanwhile supplied and which the Committee will examine at its forthcoming session (April 1997).

19. The Committee obtains regularly the cooperation of the authorities of the countries concerned. However, the authorities have sometimes argued that the Union is interfering in what they consider internal matters. In these cases, the Union has consistently stressed that its legitimate concern to ensure respect for universally recognized human rights can in no way be construed as interference in the internal affairs of a State. Indeed, it has consistently affirmed that the defence of human rights is a duty incumbent upon the human community on the basis of the internationally recognized principles set out in the International Bill of Human Rights, and applicable in all circumstances, in all countries and under any political system.